THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

Writ Petition No.26630 of 1997

Date:31.01.2007

Between

M.Sreenivas.

----------Petitioner

And

The District Collector, Medak and others.

----------Respondents

ORDER:

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Petitioner seeks a writ of Mandamus, to declare the action of the respondents in trying to evict him from the plot bearing No.30-4-31/1 (old) and 2-1-111 (new), admeasuring 150 square yards, at Subhash Gunj, Zahirabad, Medak District as illegal and arbitrary. The petitioner states that his father purchased the property in the year 1973 from the erstwhile Zahirabad Municipality, for a valuable consideration, and thereafter, obtained permission for construction on 12.09.1973. It is also his case that the construction could not be carried on, on account of paucity of funds, and on his request, the permission was renewed, through order, dated 14.10.1976. The grievance of the petitioner is that the respondents are taking steps to dispossess him from the said plot, by treating it

as Government property.

On behalf of respondents 1 to 3, a detailed counter affidavit is filed. It is stated that the land in Survey No.147, which corresponds to plot No.3-4-3/1 (old) belongs to Government and at no point of time, the petitioner or his father was conveyed the same. According to the respondents, the plot, in question, is part of the Government Hospital and when an Advocate, by name Revanaiah Swamy, sought to encroach upon it, steps were initiated under the A.P. Land Encroachment Act, 1905 (for short 'the Act') and possession thereof was recovered. Reference was made to the proceedings under Section 145 of Cr.P.C. as well as an application said to have been filed by the petitioner as late as in the year 1997, seeking regularisation of the alleged encroachment. It is ultimately urged that the property, in question, is in possession of the Government and is being utilised for the purpose of Hospital.

Sri P.Laxma Reddy, the learned counsel for the petitioner submits that the first respondent himself called for a report from the Executive Officer of the local body and in his detailed report, dated 30.07.1996, the Commissioner of the

erstwhile Nagar Panchayat, stated that the father of the petitioner was accorded permission for construction and that ever since 24 years up to that date, the property is under the enjoyment of the petitioner. Learned counsel contends that when such a long possession is recognised by the Government authorities themselves, there was absolutely no basis for the respondents to interfere with the possession of the petitioner.

Learned Government Pleader for Revenue, on the other hand, submits that except making a vague averment in the affidavit that the property was purchased, the petitioner did not furnish the particulars thereof, and at no point of time, the Government parted with the possession thereof. He contends that when attempt was made by a local Advocate to encroach the property, in question, steps were taken under the Act and possession was recovered.

In a Writ Petition filed under Section 226 of the Constitution of India, this Court cannot decide the disputed questions of fact, much less the title to a property. Be that as it may, to enable a person to seek remedy in the form of a Writ Petition, he must place certain undisputed facts,

which constitute the basis. Not withstanding the reluctance on the part of the Court to decide the title over the property, existence of sale deeds would enable the Court to examine the matter in detail, where the grievance of the petitioner is about interference with the possession thereof. In the instant case, except stating that the father of the petitioner purchased the property, in question, no reference is made to any sale deed. When the respondents have strongly urged that the property, in question, is part of Government land, the lapse on the part of the petitioner to make any reference to the source, through which he acquired the right over it, has its own role to play.

The mere fact that the petitioner or his father was granted permission to make construction over the land, does not by itself confer any right upon him. At the most, it can be treated as a material, in the event of the petitioner approaching civil Court. The allegation of the respondents that the plot, in question, is part of Government Hospital at Zahirabad, remains unrebutted.

Another factor, which dissuades this Court

from granting any relief to the petitioner, is that as late as in 1997, the petitioner himself approached the first respondent, for regularisation of the encroachment. If, in fact, he derived title to the property and his father was the owner, there was no occasion for the petitioner to approach the first respondent. The step taken by the petitioner cannot be explained away by stating that it was without prejudice to his right as owner of the property.

The cumulative effect of the various grounds, referred to above, is that the petitioner cannot be granted the relief of restraining the respondents from interfering with his alleged possession of the property.

The Writ Petition is, accordingly, dismissed. There shall be no order as to costs.

31.01.2007

JSU